

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOSEPH JILES,

Plaintiff,

-vs-

Case No. 14-CV-545

MATTHEW FRANK, RICK RAEMISCH,
WILLIAM POLLARD, GREG GRAMS,
WARDEN PHIL KINGSTON, GARY ANKARLO,
DR. STEVEN SCHMIDT, DR. KALLAS,
DR. VANDERBROOK, JOHN DOE,
DR. BREEN, and JOHN AND JANE DOES,

Defendants.

SCREENING ORDER

The plaintiff, a Wisconsin state prisoner, filed a pro se complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the court on the plaintiff's petition to proceed *in forma pauperis*. He has been assessed and paid an initial partial filing fee of \$1.97.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such

relief. 28 U.S.C. § 1915A(b).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hutchinson ex rel. Baker v. Spink*, 126 F.3d 895, 900 (7th Cir. 1997). The Court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. “Malicious,” although sometimes treated as a synonym for “frivolous,” “is more usefully construed as intended to harass.” *Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citations omitted).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). It is not necessary for the plaintiff to plead specific facts and his statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, a complaint that offers “labels and conclusions” or “formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). To state a claim, a complaint must contain sufficient factual matter, accepted as true, “that is plausible on its face.” *Id.* (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The complaint allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (citation omitted).

In considering whether a complaint states a claim, courts should follow the principles set forth in *Twombly* by first, “identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679. Legal conclusions must be supported by factual allegations. *Id.* If there are well-pleaded factual allegations, the court must, second, “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that:

- 1) he was deprived of a right secured by the Constitution or laws of the United States; and
- 2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)); *see also Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff’s pro se allegations, “however inartfully pleaded,” a liberal construction. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

The plaintiff alleges that the defendants have been deliberately indifferent to his serious mental health needs spanning three institutions and nine years. He asserts that in 2005, he was diagnosed with “acute psychosis.” (Compl. at 3.) The plaintiff alleges that,

beginning in 2005, he was not treated for his obvious mental illnesses but instead was shuffled between the segregation units of Waupun Correctional Institution, Columbia Correctional Institution, and Green Bay Correctional Institution, and dealt with as a “problematic inmate.” According to the plaintiff, this resulted in an ever-changing panel of psychologists and psychiatrists, and prevented him from establishing the rapport required to engage in treatment. At this stage of the proceedings, the Court finds that the plaintiff may proceed on his deliberate indifference to mental health claims. *See Sanville v. McCaughtry*, 266 F.3d 724, 734 (7th Cir. 2001).

In addition, the plaintiff has filed a petition for competency determination and appointment of guardian ad litem. In support of his petition, he states that he attaches the affidavit of Christopher Goodvine, that he has been committed to a mental health facility, and that he is not competent to proceed in this matter on his own.

“The court must appoint a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). A district court need not inquire *sua sponte* into a pro se plaintiff’s mental competence based on a litigant’s bizarre behavior alone, even if such behavior suggests mental illness. *Powell v. Symons*, 680 F.3d 301, 307 (3d Cir. 2012) (citing *Ferrelli v. River Manor Health Care Center*, 323 F.3d 196, 201 (2d Cir. 2003)). “[B]izarre behavior alone is insufficient to trigger a mandatory inquiry into a litigant’s competency but ‘if there has been a legal adjudication of incompetence and that is brought to the court’s attention, the

Rule's provision is brought into play.'" *Id.* (quoting *Hudnall v. Sellner*, 800 F.2d 377, 385 (4th Cir. 1986)). A court is not required to conduct a *sua sponte* determination whether a pro se litigant is incompetent unless there is some verifiable evidence of incompetence. *Id.*

The plaintiff is incarcerated at Columbia Correctional Institution. Although the petition states that it is supported by an attached affidavit, no affidavit is attached to the petition or has otherwise been filed. In addition, no other verifiable evidence has been filed regarding the plaintiff's competency. Accordingly, the plaintiff's petition will be denied.

ORDER

IT IS THEREFORE ORDERED that the plaintiff's motion for leave to proceed *in forma pauperis* (Docket # 3) be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff's motion for order re competency determination and motion for the appointment of guardian ad litem (Docket # 2) be and hereby is **DENIED**.

IT IS FURTHER ORDERED that pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being electronically sent today to the Wisconsin Department of Justice for service on the state defendants.

IT IS ALSO ORDERED that, pursuant to the informal service agreement between the Wisconsin Department of Justice and this court, the defendants shall file a responsive pleading to the complaint within sixty days of receiving electronic notice of this

order.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the \$348.03 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS ALSO ORDERED that a copy of this order be sent to the warden of the institution where the inmate is confined.

IT IS FURTHER ORDERED that the plaintiff shall submit all correspondence and legal material to:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter. As each filing will be electronically scanned and entered on the docket upon receipt by the clerk, the plaintiff need not mail copies to the defendants. All defendants will be served electronically through the court's electronic case filing system. The plaintiff should also retain a personal copy of each document filed with

the court.

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin, this 5th day of August, 2014.

SO ORDERED,


HON. RUDOLPH T. RANDA
U. S. District Judge